



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Recoupment of Allotments Erroneously Paid After
Death of a Member of the Military

File: B-225873

Date: September 25, 1987

DIGEST

1. An allotment erroneously paid from the pay and allowances of a member of the uniformed services after the death of the member may not be recouped from the recipient thereof or charged against the pay of the deceased member, except an allotment for unearned insurance premiums.
2. Life insurance premiums paid by allotment after the death of a member are to be recouped since an insurance company has no right to premiums after the member's death.
3. The anti-recoupment provisions of 31 U.S.C. § 3727(e)(2) and 37 U.S.C. § 556(f) apply to any person, including assignees, transferees or allottees, receiving money paid under an assignment or allotment of pay or allowances authorized by law, except unearned insurance premiums. This includes an allottee who may also be the beneficiary of the arrears of pay.

BACKGROUND

The Deputy Assistant Secretary (Accounting and Audit) of the Air Force has asked several questions concerning recoupment of allotments which were overpaid by reason of death of the allotter.^{1/}

^{1/} The case was approved for submission by the Department of Defense Military Pay and Allowance Committee and assigned number SS-AF-1455.

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The questions arise concerning the proper application of two statutes.^{2/} The first statute, 31 U.S.C. § 3727(e)(2) (1982), reads as follows:

"The Government may not collect or reclaim money paid to a person receiving an amount under an assignment or allotment of pay or allowances authorized by law when liability may exist because of the death of the person making the assignment or allotment."

The second statute, 37 U.S.C. § 556(f) (1982) reads as follows:

"Except an allotment for an unearned insurance premium, an allotment paid from pay and allowances of a member for the period he is entitled to pay and allowances under section 552 of this title may not be collected from the allottee as an overpayment when it was caused by delay in receiving evidence of death. An allotment payment for a period after the end of entitlement to pay and allowances under this chapter, or otherwise, which was caused by delay in receiving evidence of death, may not be collected from the allottee or charged against the pay of the deceased."

DISCUSSION

The purpose of 31 U.S.C. § 3727(e)(2), originally part of the Military Appropriation Act, 1945, Pub. L. 78-374, 58 Stat. 573, 575 (1944), was to ensure that allottees would be able to cash their allotment checks without delay. Thus, banks were not to be held responsible if they cashed checks. See H.R. Rep. No. 1606, 78th Cong., 2d Sess. 14-15 (1944). The purpose of 37 U.S.C. § 556(f), originally part of the Missing Persons Act, amendments, Pub. L. 78-408, 58 Stat. 679, 681 (1944), was to ensure, with the exception of insurance premiums, that allotment payments made after a member died, whether he was in a missing status or not, would not be collectible from the allottee or charged against the pay of the deceased individual if the allotment were continued due to a delay in receiving evidence of

^{2/} We were also asked to consider whether the holding in 26 Comp. Dec. 855 (1920) would be relevant to this matter. That decision, which dealt with recoupment of allotments of deceased members, is irrelevant in view of the enactment of the two statutes in 1944.

death. See H.R. Rep. No. 1674, 78th Cong., 2d Sess. 9-10 (1944). In summary, the two statutes basically were remedial provisions designed to protect allottees during a time of crisis when the allottees were often in a missing status or dead.

In B-53010, November 23, 1945, we had occasion to discuss the interplay of these two statutes in regard to an allotment made by an officer of the U.S. Marine Corp Reserve who had died in the Philippine Islands on February 22, 1945, as a result of a mid-air collision. He was never carried in a missing status, nor was there any delay in the Corps receiving evidence of his death. Nevertheless, for both February and March 1945, the Marine Corps paid an allottee a \$100 allotment the member had designated prior to his death.

Since 37 U.S.C. § 556(f) only applied to situations where the payment of an allotment had been made due to a delay in receiving evidence of death, the Marine Corps suggested that it could charge the payments against the decedent's account for the amount of the allotment paid after his death (\$123.67 for February 23-March 31, 1945). As we explained, 31 U.S.C. § 3727(e)(2) provides unequivocally that no recoupment of allotments should be made from an allottee or charged to an allotter's account when the basis of such a recoupment or charge would arise from a liability which might exist because of the death of the allotter. Therefore there should be no charge to the member's account. It is clear that this law not only protects allottees but the institutions involved in cashing allotment checks. Therefore, except for one minor exception, once an allotment is deposited in any account, this allotment is subject to the provisions of 31 U.S.C. § 3727(e)(2), regardless of the type of allotment.^{3/} The minor exception is simply that if the erroneous allotment includes a portion of a month in which the member was alive, then his pay account is charged for the pro rata share of the allotment for the time he was alive. See B-53010, November 23, 1945. This, however, is actually not a recoupment since the member's account is being charged for what was a correct payment.

The general provisions of 31 U.S.C. § 3727(e)(2) do not preclude recoupment of insurance premiums. In this situation, the premiums are to be recouped from the recipient of the allotment, whether the policy is a commercial or

^{3/} If a check is sent directly to an allottee and has not been negotiated, then recoupment action would be appropriate. See B-169453, April 20, 1970.

Government policy, and credited to the deceased member's account as arrears of pay. See B-122121, May 10, 1955. As we have noted in regard to an issue of this type, when an insured dies his liability for paying life insurance premiums ceases. Id. Consequently, the insurance company has no right to the unearned premiums, which should be recouped by the Government.

The Assistant Secretary also has asked whether setoff from any arrears of pay would be allowed when an overpayment has been made that falls under 31 U.S.C. § 3727(e)(2). In this regard, he asks whether the answer would be different if the beneficiary of the arrears of pay was also an allottee.

As we pointed out in B-53010, November 23, 1945, when an allotment has been paid erroneously but is not for recoupment due to 31 U.S.C. § 3727(e)(2), any arrears of pay due a deceased individual are not reduced by the amount of the erroneous allotment. We did not state that this rule was to be different if the beneficiary of the arrears of pay was also an allottee.

Moreover, we find nothing in the legislative history or the statutory language of either 31 U.S.C. § 3727(e)(2) or 37 U.S.C. § 556(f) to indicate, other than an allotment for unearned insurance premiums, that payments are to be recouped from any allottee whether the allottee is the member's beneficiary or not. Great hardship could result to an allottee who is also the member's beneficiary if the allottee has been paid an allotment over an extended period of time when the member is carried in a missing status, sometimes over a period of several years, to be later declared deceased to a retroactive date coinciding with the date the member was first placed in a missing status. Therefore any recoupment in such circumstances would be against equity and good conscience.

The purpose of 31 U.S.C. § 3727(e)(2) as stated in the legislative history was to avoid any difficulty or delay in cashing allotment checks of military personnel. This undoubtedly was meant to ease the hardship to dependents who were in need of the allotments for support, but also was to provide for the orderly processing of any allotment through a financial institution without risk to that institution should it later be determined that the member was deceased at the time the allotment was issued. The Air Force has listed nine types of allotments currently available to an Air Force active duty member or retiree. We find nothing to indicate that any of them other than an allotment for

insurance should be excluded from the recoupment prohibitions.

In the penultimate paragraph of his submission, the Assistant Secretary notes that the scope of anti-recoupment provision in 31 U.S.C. § 3727(e)(2) has been limited in its application by the Air Force. He notes that the long administrative practice has been to limit the provision to dependency allotment as Congress logically must have intended this.

We disagree with the Assistant Secretary's characterization of Congress' intent. Although originally enacted as part of the Military Appropriation Act, 1945, the law is legislation of a general character applying to any money paid to an allottee under an allotment made under the authority of law. See B-53010, November 23, 1945. Moreover, as we have stated previously, Congress passed the law to protect financial institutions cashing allotment checks. Although facilitating the cashing of an allotment check clearly benefits allottees, including dependents, it cannot be said that the purpose of the law was merely to assist dependents.

Accordingly, all recoupment of allotments following the death of a military member are to be handled consistent with this opinion.

for *Harry R. Van Cleave*
Comptroller General
of the United States